



PEACE CORPS

22 CFR Part 303

RIN 0420-AA31

Procedures for Disclosure of Information under the Freedom of Information Act

AGENCY: The Peace Corps.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations that the Peace Corps follows in processing requests under the Freedom of Information Act (FOIA) to comply with the FOIA Improvement Act of 2016. The amendments would clarify and update procedures for requesting information from the Peace Corps and procedures that the Peace Corps follows in responding to requests from the public.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by Regulatory Information Number (RIN) 0420-AA31, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for sending comments.
- E-mail: policy@peacecorps.gov. Include RIN 0420-AA31 in the subject line of the message.
- Mail: The Peace Corps / The Office of the General Counsel / 1275 First Street, NE / Washington, DC 20526.

Instructions: All submissions received must include the receiving agency's name, which is the Peace Corps, designate the Office of the General Counsel, and note the RIN for this rulemaking.

FOR FURTHER INFORMATION CONTACT: David van Hoogstraten, Supervisory

Associate General Counsel at (202) 692-2150 or dvanhoogstraten@peacecorps.gov.

SUPPLEMENTARY INFORMATION: On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016, Public Law 114-185, 130 Stat. 538 (the Act). The Act specifically requires all agencies to review and update their FOIA regulations in accordance with its provisions, and the Peace Corps is making changes to its regulations accordingly. Among other requirements, the Act addresses a range of procedural issues that affect Peace Corps FOIA regulations, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that agencies provide notice to requesters of dispute resolution services at various times throughout the FOIA process. The proposed rule would revise and update policies and procedures concerning the Peace Corps FOIA process, which were last published in the *Federal Register* (FR) on April 10, 2014 (79 FR 19816), entered into effect on May 12, 2014, and currently appear at 22 CFR part 303.

Request For Comments: The Peace Corps invites public comment on all aspects of this proposed rule and will take those comments into account before publishing a final rule. The proposed rule makes small adjustments for clarification, rearranges and redesignates sections in a more logical order, streamlines the language of some procedural provisions, and makes the following key changes:

22 CFR Part 303

(1) *Definitions.* Section 303.2 is expanded to revise current definitions and add definitions for the following terms: “Compelling need,” “Confidential commercial information,” “Direct costs,” “Unusual circumstances,” and “Initial denial authority (IDA).”

(2) *Public reading room.* Section 303.5 is revised to delete reference to a physical public reading room and to provide for a public electronic FOIA Library on the Peace Corps website on which certain specified records will be made available. Also, related to this change, the former § 303.6 (*Procedures for use of public reading room.*) is deleted.

(3) *Requests for records.* This section, the former § 303.8, has been redesignated as § 303.7 and is updated to provide revised procedures for the following paragraphs:

- (b) through (d) Submitting a FOIA request;
- (f) Requesting a waiver or reduction of fees;
- (h) Initial response/delays to FOIA requests;
- (j) Giving notice of delays; and
- (l) Requesting expedited processing and appeals from denials of requests for expedited processing.

(4) *Timing of responses to requests.* A new § 303.8 sets forth guidelines and procedures for:

- (a) Order of response to FOIA requests;
- (b) Multitrack processing;
- (c) Delays in responses due to unusual circumstances and notice of such delays and of the availability of both the FOIA Public Liaison and the dispute resolution services provided for by the Office of Government Information Services (OGIS);
- (d) Aggregating requests; and
- (e) Expedited processing.

(5) *Exemptions for withholding records.* A revised § 303.9 provides that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(6) *Responses to requests.* A new § 303.11 sets forth guidelines and procedures for:

- (a) Electronic communication with requesters;
- (b) Acknowledgement of requests that will take longer than 10 working days to process;
- (c) Estimated dates of completion and interim responses;
- (d) The granting of requests;
- (e) Adverse determination of requests;

(f) Markings on released documents; and

(g) Use of records exclusions.

(7) *Appeals*. A renumbered § 303.13, formerly § 303.12, is updated to set forth revised guidelines and procedures for:

(a) Submitting appeals;

(b) Adjudication of appeals;

(c) Decisions on appeals;

(d) Engaging in dispute resolution services offered by OGIS; and

(e) When an appeal is required.

(8) *Confidential commercial information*. A new § 303.14 sets forth guidelines and procedures for:

(a) Designation of confidential commercial information;

(b) When notice to submitters is required;

(c) Exceptions to submitter notice requirements;

(d) Opportunity to object to disclosure;

(e) Analysis of objections;

(f) Notice of intent to disclose;

(g) Notice of FOIA lawsuit; and

(h) Requester notification.

(9) *Preservation of records*. A new § 303.15 sets forth guidelines and procedures for preserving records pertaining to the requests it receives under this subpart.

(10) *Fees*. A revised § 303.16, formerly § 303.13, incorporates the new statutory restrictions on charging fees in certain circumstances, reflects developments in the case law, and streamlines the description of the factors to be considered when making fee waiver determinations. In this regard, § 303.16(a) is revised to conform to recent appellate court decisions addressing two FOIA fee categories: “representative of the news media” and

“educational institution.” Section 303.16(e)(2), which addresses restrictions on charging fees when the FOIA’s time limits are not met, is revised to reflect changes made to those restrictions by the FOIA Improvement Act of 2016. Specifically, these changes reflect that the Peace Corps may not charge search fees or duplication fees for representatives of the news media and educational/non-commercial scientific institution requesters when the Peace Corps fails to comply with the FOIA’s time limits. The restriction on charging fees is excused and the Peace Corps may charge fees as usual when it satisfies one of three exceptions detailed at 5 U.S.C. 552(a)(4)(A)(viii)(II) and incorporated into this section at § 303.16(e)(2)(ii) through (iv). Lastly, § 303.16(l), which addresses the requirements for a waiver or reduction of fees, is revised to specify that requesters may seek a waiver of fees and to streamline and simplify the description of the factors to be considered by the Peace Corps when making fee waiver determinations.

(11) *Procedures for responding to a subpoena.* A redesignated § 303.17, formerly § 303.14, is updated to revise the definition of “employee” in this section to include volunteers and trainees of the Peace Corps for purposes only of § 303.17.

(12) *Other rights and services.* A new § 303.18 sets forth that nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Regulatory Certifications

Executive Orders 12866 and 13563 – Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation, and the Peace Corps has determined it to be non-significant within the meaning of Executive Order 12866. Additionally, because this proposed rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See the Office of Management and Budget’s

(OMB's) Memorandum titled "Interim Guidance Implementing section 2 of the Executive order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017), supplemented by OMB's Memorandum titled "Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs.'"

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 22 CFR Part 303

Freedom of Information Act.

For the reasons set out in the preamble, the Peace Corps proposes to amend 22 CFR part 303 as follows:

**PART 303—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE
FREEDOM OF INFORMATION ACT**

1. The authority citation for part 303 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 22 U.S.C. 2501 *et seq.*; 31 U.S.C. 3717.

2. Revise § 303.2 as follows:

§ 303.2 Definitions.

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester has made a commercial use request, the Peace Corps will look to the use to which a requester will put the documents requested. When the Peace Corps has reasonable cause to doubt the requester's stated use of the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a category.

Compelling need means:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Peace Corps or Federal Government activity and the request is made by a person primarily engaged in disseminating information; or

(3) A matter of widespread and exceptional media interest in which there exist possible questions about the Peace Corps' or the Federal Government's integrity which affect public confidence.

Confidential commercial information means commercial or financial information obtained by the Peace Corps from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

Direct costs are those expenses that the Peace Corps incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the

work (i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses, such as the costs of space, and of heating or lighting a facility.

Duplication means the process of making a copy of a record requested pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education which operates a program or programs of scholarly research.

Expedited processing means the process set forth in the FOIA that allows requesters to ask for expedited processing of their FOIA request if they can demonstrate a compelling need.

Fee waiver means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

FOIA Public Liaison means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Initial denial authority (IDA) is an official who has been granted authority as the FOIA Officer who may deny FOIA requests of the Peace Corps based on one or more of the nine categories of exemptions from mandatory disclosure. An IDA also: denies a fee category claim by a requester; denies a request for expedited processing due to demonstrated compelling need; denies a request for a waiver or reduction of fees; reviews a fee estimate; and confirms that no records were located in response to a request.

Non-commercial scientific institution means an institution that is not operated on a “commercial” basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

OIG records means those records as defined generally in this section which originated with or are in the possession and control of the Office of Inspector General (OIG) of the Peace Corps which have been compiled for law enforcement, audit, and investigative functions and/or any other purpose authorized under the IG Act of 1978, as amended.

Records means books, papers, maps, photographs, or other documentary materials, regardless of whether the format is physical or electronic, made or received by the Peace Corps in connection with the transaction of Peace Corps' business and preserved by the Peace Corps as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Peace Corps, or because of the informational value of data in them. The term does not include, inter alia, books, magazines, or other materials acquired solely for library purpose, or that are otherwise publicly available.

Representative of the news media is any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide

the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

Requester category means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, including commercial requesters; non-commercial scientific or educational institutions or news media requesters, and all other requesters.

Review means the process of examining a document located in response to a request to determine whether any portion of such document is exempt from disclosure. It also includes processing any such document for disclosure. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive manner. If the Agency cannot identify the requested records after a 2 hour search, it can determine that the records were not adequately described and ask the requester to provide a more specific request.

Submitter means any person or entity, including a corporation, state, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

Unusual circumstances, as used in this part, mean circumstances attending a request for information and are limited to the following, but only to the extent reasonably necessary for the proper processing of the particular request:

- (1) The need to search for and collect the requested records from offices or locations that are separate from the office processing the request;
- (2) The need to search for, collect, and appropriately examine a voluminous amount of

separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization having a substantial interest in the determination of the request or among two or more offices of the Peace Corps having a substantial subject matter interest therein.

3. Revise § 303.3 to read as follows:

§ 303.3 Policy.

(a) The Peace Corps will make its records concerning its operations, activities, and business available to the public consistent with the requirements of the FOIA and will not withhold requested information unless the Peace Corps reasonably foresees that disclosure would harm an interest protected by an exemption under the FOIA or a disclosure that is prohibited by law.

(b) The Peace Corps may make discretionary disclosures of records or information, without a formal FOIA request and that may be exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(c) Requests for records of the Office of Inspector General (OIG records), as defined in § 303.2, and appeals from denials of requests for OIG records are subject to this policy and will be granted or denied consistent with § 303.10(b) through (c) through their own FOIA adjudication process.

4. Revise § 303.5 to read as follows:

§ 303.5 FOIA Library.

(a) The public reading room is no longer physically available. The Peace Corps makes information available to the public electronically through the Peace Corps' FOIA Library on its public website at <https://www.peacecorps.gov/about/open-government/>.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the FOIA Library:

(1) All final public opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases that involve the Peace Corps;

(2) Statements of policy and interpretations adopted by the Peace Corps that are not published in the *Federal Register*;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) Copies of frequently requested records, regardless of form or format, with a general index of such records:

(i) Released to any person in response to a public request for records which the Peace Corps determines are likely to become subject to subsequent requests for substantially the same records or

(ii) For which there have been 3 or more requests;

(5) The index required by § 303.6; and

(6) Other records the Peace Corps has determined are of general interest to members of the public in understanding activities of the Peace Corps or in dealing with the Peace Corps in connection with those activities.

(c) Records required by the FOIA to be available in the FOIA Library may be exempt from mandatory disclosure pursuant to section 552(b) of the FOIA. Such records will not be made available in the FOIA Library. Other records maintained in the FOIA Library may be edited by the redaction of information protected under section 552(b) of the FOIA. The extent of the redaction shall be indicated, unless doing so would harm an interest protected by the exemption under which the redaction is made. If technically feasible, the extent of the redaction shall be indicated at the place in the record where the redaction was made.

(d) Records required by the FOIA to be maintained shall be made available in the Peace Corps' electronic FOIA Library.

(e) Most public electronic records will also be made available to the public on the Peace Corps website at <https://www.peacecorps.gov>.

§ 303.6 [Removed]

5. Remove § 303.6.

§§ 303.7 and 303.8 [Redesignated as §§ 303.6 and 303.7]

6. Redesignate §§ 303.7 and 303.8 as §§ 303.6 and 303.7, respectively.

7. Revise newly redesignated § 303.7 to read as follows:

§ 303.7 Requests for records.

(a) Except for records required by the FOIA to be published in the *Federal Register* or to be made available in the FOIA Library, Peace Corps records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA.

(b) Requests for records under this section shall be:

(1) Made in writing, shall include the name of the requester, and the envelope, email, and/or the letter shall be clearly marked "Freedom of Information Request." All such requests shall be addressed to the FOIA Officer. Requests by letter shall be directed to Peace Corps FOIA Officer, 1275 First Street NE, Washington DC 20526. Requests by email shall be directed to FOIA@peacecorps.gov. Any request not marked and addressed as specified in this paragraph will be so marked by Peace Corps personnel as soon as it is properly identified and will be forwarded immediately to the FOIA Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set out in paragraph (h) of this section until it has been received by the FOIA Officer. Upon receipt of an improperly addressed request, the FOIA Officer shall notify the requester of the date on which the time period began. All paper requests shall be stamped "received" on the date it is received by the FOIA Officer. Electronic requests are deemed to be "received" on the date in which the FOIA Officer acknowledges receipt.

(2) A request must reasonably describe the records requested so that employees of the Peace Corps who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Peace Corps personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph (b).

(c) The Peace Corps requires that first-party requesters provide the following information so that the Peace Corps can protect the personal information found in its files and ensure that records are disclosed only to the proper persons: the requester's full name, current address, citizenship or legal permanent resident alien status, date and place of birth (city, state, and country), and a copy of a photo ID. A first-party request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746 as a substitute for notarization. A requester may request this penalty of perjury statement from the FOIA office to complete for submission.

(d) To facilitate the location of records by the Peace Corps, a requester should try to provide the following kinds of information, if known:

- (1) The specific event or action to which the record refers;
- (2) The unit or program of the Peace Corps which may be responsible for or may have produced the record;
- (3) The date of the record or the date or period to which it refers or relates;
- (4) The type of record, such as an application, a particular form, a contract, or a report;
- (5) Personnel of the Peace Corps who may have prepared or have knowledge of the record; or
- (6) Citations to newspapers or publications which have referred to the record.

(e) The Peace Corps is not required to create a record or to perform research to satisfy a request.

(f) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver or reduction of fees, as set out in § 303.16(k).

(g) The Peace Corps will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(h)(1) The FOIA Officer or OIG FOIA Officer, upon request for any records made in accordance with this section, , shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, as defined in § 303.2, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(2) If the FOIA Officer determines that a request or portion thereof is for OIG records, the FOIA Officer shall promptly refer the request or portion thereof to the OIG FOIA Officer and send notice of such action to the requester. In such case, the OIG FOIA Officer shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched

(i) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (h) of this section, the Peace Corps may ask the requester to narrow the request or agree to an additional delay.

(j) When no determination can be dispatched within the applicable time limit, the FOIA Officer or the OIG FOIA Officer shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Associate Director for the Office of Management or the Inspector General, in accordance with § 303.13. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with § 303.13. The FOIA Officer or the OIG FOIA Officer may ask the requester to forego an appeal until a determination is made.

(k) After it has been determined that a request will be granted, the responsible official will act with due diligence in providing a prompt response.

(l)(1) Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need as defined in § 303.2.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be properly addressed and marked and received by the Peace Corps pursuant to § 303.7(b).

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need, as defined in § 303.2, that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within 10 business days of its receipt of a request for expedited processing, the FOIA Officer or the OIG FOIA Officer shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

(5) Appeals regarding expedited processing denials shall be made to the Associate Director for the Office of Management, or in the case of a denial by the OIG FOIA Officer of a

request for expedited processing, the Inspector General, who shall respond within 10 business days of receipt of the appeal.

8. Add new § 303.8 to read as follows:

§ 303.8 Timing of responses to requests.

(a) *In general.* The Peace Corps ordinarily will respond to requests according to their order of receipt. The response time will commence on the date that the request is received by the Peace Corps' FOIA Officer or by the OIG FOIA Officer.

(b) *Multitrack processing.* The Peace Corps designates a specific track for requests that are granted expedited processing in accordance with the standards set forth in paragraph (e) of this section. The Peace Corps may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors the Peace Corps may consider are the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. The Peace Corps will advise requesters of the track into which their request falls and, when appropriate, should offer the requesters an opportunity to narrow or modify their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the Peace Corps cannot meet the time limit for processing a request because of unusual circumstances as defined in § 303.2 and the Peace Corps extends the time limit on that basis, the Peace Corps will, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the Peace Corps estimates processing of the request will be completed. Where the extension exceeds 10 working days, the Peace Corps will provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The Peace Corps will make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The Peace Corps FOIA Public Liaison is identified on the agency's FOIA Open Government webpage <https://www.peacecorps.gov/about/open->

government/foia/ and is available at FOIA@peacecorps.gov. The Peace Corps will also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(d) *Aggregating requests.* To address unusual circumstances as defined in § 303.2, the Peace Corps may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The Peace Corps will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) The Peace Corps will process requests and appeals on an expedited basis whenever it is determined that they involve a compelling need as defined in § 303.2.

(2) A request for expedited processing of a request for information may be made at any time and submitted to the Peace Corps FOIA Officer or to the OIG FOIA Officer in the case of a request concerning OIG records. When making a request for expedited processing of an administrative appeal, the request should be submitted to the Associate Director for the Office of Management, or in the case of an appeal concerning OIG records, the Inspector General.

(3) A requester who seeks expedited processing will submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, in § 303.2, paragraph (2) of the definition for compelling need, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject may be helpful in establishing the requirement

that there be an “urgency to inform” the public on the topic. As a matter of administrative discretion, the Peace Corps may waive the formal certification requirement.

(4) The Peace Corps will notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and processed as soon as practicable. If a request for expedited processing is denied, the Peace Corps will act on any appeal of that decision expeditiously.

9. Amend § 303.9 by revising paragraphs (a) introductory text, (a)(5), and paragraph (b) introductory text to read as follows:

§ 303.9 Exemptions for withholding information.

(a) The Peace Corps may withhold information in part or in its entirety using FOIA exemptions listed in 5 U.S.C. 552 (b), when the Initial Denial Authority (IDA) reasonably foresees that the disclosure of such information would cause harm to an interest protected by the exemption or exemptions, or if disclosure is prohibited by law. The Peace Corps will take reasonable steps necessary to segregate and release nonexempt information. The Peace Corps may withhold a requested record from public disclosure only if the record fits within one or more of the following FOIA exemptions:

* * * * *

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Peace Corps, except that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

* * * * *

(b) The IDA may also withhold information applicable under the Privacy Act of 1974, 5 U.S.C 552a(j) and (k) when the records are managed within a system of records; see 22 CFR part 308.

* * * * *

10. Amend § 303.10 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 303.10 Responsibilities and authorities.

* * * * *

(c) *Authority to grant or deny appeals.* The Associate Director for the Office of Management is authorized to grant or deny appeals under § 303.13(a) through (c) except in the case of appeals from denials of requests for OIG records. The Inspector General is authorized to grant or deny appeals under § 303.13(a) through (c) from denials of requests for OIG records. Both the Associate Director for the Office of Management and the Inspector General shall follow this part in processing appeals.

* * * * *

§§ 303.13 and 303.14 [Redesignated as §§ 303.16 and 303.17]

11. Redesignate §§ 303.13 and 303.14 as §§ 303.16 and 303.17, respectively.

§§ 303.11 and 303.12 [Redesignated as §§ 303.13 and 303.14]

12. Redesignate §§ 303.11 and 303.12 as §§ 303.13 and 303.14, respectively

13. Add new § 303.11 to read as follows:

§ 303.11 Responses to requests.

(a) *In general.* The Peace Corps, to the extent practicable, will communicate with requesters having access to the Internet electronically, such as email or web portal.

(b) *Acknowledgments of requests.* The Peace Corps will acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. The Peace Corps will include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Estimated dates of completion and interim responses.* Upon request, the Peace Corps will provide an estimated date by which the Peace Corps expects to provide a response to the

requester. If a request involves a voluminous amount of material, or searches in multiple locations, the Peace Corps may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once the Peace Corps determines it will grant a request in full or in part, it will notify the requester in writing. The Peace Corps will also inform the requester of any fees charged under § 303.16 and will disclose the requested records to the requester promptly upon payment of any applicable fees. The Peace Corps will inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(e) *Adverse determinations of requests.* If the Peace Corps makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Markings on released documents.* The Peace Corps will release any reasonably segregable portion of a record after redaction of the exempt portions. The amount of information redacted and the exemption under which the redaction is made shall be indicated on the released portion of the record unless doing so would harm an interest protected by an applicable exemption. The location of the information redacted will also be indicated on the record, if technically feasible.

(g) *Use of record exclusions.* (1) In the event that the Peace Corps identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the Peace Corps will confer with Department of Justice, Office of Information Policy (OIP), prior to application of the exclusion.

(2) The Peace Corps, when invoking an exclusion, should document its consultation with OIP.

14. Revise newly redesignated § 303.12 to read as follows:

§ 303.12 Denials.

(a) A denial of a written request for a record or information that complies with the requirements of § 303.7 shall be in writing and shall include, as applicable:

- (1) The name and title or position of the responsible IDA;
- (2) The signature of the agency's FOIA Officer, or in the case of denials of requests concerning OIG records, the signature of the Inspector General or designee;
- (3) A brief statement of the reasons for the denial, including any FOIA exemption applied in denying the request;
- (4) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by redactions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;
- (5) For any information denied under Exemption 3, the specific statute relied upon to deny the information along with a short description of the statute;
- (6) A statement that the requester must appeal no later than 90 days after the date of the denial and along with instructions on how to appeal to the appellate authority. The instructions will include the appellate authority's duty title, the mailing address for the appeal, and instructions on how the requester can appeal electronically; as defined under § 303.13; and
- (7) A statement notifying the requester of the assistance available from the Peace Corps' FOIA Public Liaison and the dispute resolution services offered by OGIS.

(b) [Reserved]

15. Revise newly redesignated § 303.13 to read as follows:

§ 303.13 Appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to the Associate Director of the Office of Management or, in the case of a denial of a request for OIG records, the Inspector General. Examples of adverse determinations are provided in § 303.11(e). Requesters can submit appeals by mail or online in accordance with the following requirements or with those on the Peace Corps' website. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the response. The appeal should clearly identify the Peace Corps' determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.* (1) The Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will consider all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the Associate Director of the Office of Management, or in the case of a denial of a request for OIG records, the Inspector General, will take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals.* The Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will provide the decision on an appeal in writing. A decision that upholds a determination in whole or in part will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the dispute resolution services offered by the OGIS of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a decision is remanded or modified

on appeal, the Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will notify the requester of that determination in writing. The Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will then further process the request in accordance with that appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If the Peace Corps agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When an appeal is required.* Before seeking review by a court of a Peace Corps' adverse determination, a requester generally will first submit a timely administrative appeal.

16. Add new § 303.14 to read as follows:

§ 303.14 Confidential commercial information.

(a) *Designation of confidential commercial information.* A submitter of confidential commercial information as defined in § 303.2 will use good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(b) *When notice to submitters is required.* (1) The Peace Corps will promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the Peace Corps determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The Peace Corps has a reason to believe that the requested information may be protected from disclosure under Exemption 4 but has not yet determined whether the information is protected from disclosure.

(2) The notice will either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the Peace Corps may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(c) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) The Peace Corps determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, the Peace Corps will give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(d) *Opportunity to object to disclosure.* (1) The Peace Corps will specify a reasonable time period within which the submitter may respond to the notice referenced in paragraph (b) of this section.

(2) If a submitter has any objections to disclosure, it should provide the Peace Corps a detailed written statement that specifies all grounds for withholding the particular information

under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter will explain why the information constitutes a trade secret or commercial or financial information that is commercially confidential.

(3) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. The Peace Corps is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this part may itself be subject to disclosure under the FOIA.

(e) *Analysis of objections.* The Peace Corps will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(f) *Notice of intent to disclose.* Whenever the Peace Corps decides to disclose information over the objection of a submitter, the Peace Corps will provide the submitter written notice, which will include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the Peace Corps intends to release them; and

(3) A specified disclosure date, which will be a reasonable time after the notice.

(g) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Peace Corps will promptly notify the submitter.

(h) *Requester notification.* The Peace Corps will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

17. Add § 303.15 to read as follows:

§ 303.15 Preservation of records.

The Peace Corps will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. The Peace Corps will not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

18. Revise newly redesignated § 303.16 to read as follows:

§ 303.16 Fees.

(a) *In general.* The Peace Corps will charge for processing requests under the FOIA in accordance with the provisions of this section and with the Guidelines of the Office of Management and Budget (OMB). For purposes of assessing fees, the FOIA establishes three categories of requesters:

- (1) Commercial use requesters;
- (2) Non-commercial scientific or educational institutions or news media requesters; and
- (3) All other requesters.

(b) *Fee assessment.* Different fees are assessed depending on the requester category and approved by the FOIA Officer. Requesters may seek a fee waiver. The Peace Corps will consider individual requests for fee waivers in accordance with the requirements in paragraph (l) of this section. To resolve any fee issues that arise under this section, Peace Corps may contact a requester for additional information. The Peace Corps will ensure that searches, reviews, and duplications are conducted in the most efficient and the least expensive manner. The Peace Corps ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters will pay fees by check or money order made payable to the Treasury of the United States, or by another method as determined by the Peace Corps.

(c) *Fee charging considerations.* (1) Whether the request is a commercial use request as defined in § 303.2. The Peace Corps' decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The Peace Corps will notify requesters of their placement in this category.

(2) The sum of direct costs as defined in § 303.2.

(3) The cost of duplication as defined in § 303.2.

(4) Whether the requester is an educational institution as defined in § 303.2. A requester in this fee category will show that the request is made in connection with his or her role at the educational institution. The Peace Corps may seek verification from the requester that the request is in furtherance of scholarly research, and the Peace Corps will advise requesters of their placement in this category.

Example 1 to paragraph (c)(4). A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

Example 2 to paragraph (c)(4). A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

Example 3 to paragraph (c)(4). A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(5) Whether the requester is a noncommercial scientific institution as defined in § 303.2. A requester in this category will show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific

research and are not for a commercial use. The Peace Corps will advise requesters of their placement in this category.

(6) Whether the requester is a representative of the news media as defined in § 303.2. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Peace Corps may also consider a requester’s past publication record in making this determination. The Peace Corps will advise requesters of their placement in this category.

(7) The cost of the review as defined in § 303.2. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 303.14, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) The cost of the time involved in the search as defined in § 303.2. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(d) *Charging fees.* In responding to FOIA requests, the Peace Corps will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (l) of this section. Because the fee amounts provided under paragraph (m) of this section already account

for the direct costs associated with a given fee type, the Peace Corps will not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. The Peace Corps will charge search fees for all other requesters, subject to the restrictions of paragraph (e) of this section. The Peace Corps may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be charged.

(iii) The Peace Corps will charge the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. The Peace Corps will notify the requester of the costs associated with creating such a program, and the requester will agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by the Peace Corps at a Federal records center operated by the National Archives and Records Administration (NARA), agencies will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* The Peace Corps will charge duplication fees to all requesters, subject to the restrictions of paragraph (e) of this section. The Peace Corps will honor a requester's preference for receiving a record in a particular form or format where the Peace Corps can readily reproduce it in the form or format requested. Where photocopies are supplied, the Peace Corps will provide one copy per request at no charge up to 100 pages. For copies of records produced on tapes, disks, or other media, the Peace Corps will charge the direct costs of producing the copy, including operator time. Where paper documents will be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester

will also pay the direct costs associated with scanning those materials. For other forms of duplication, the Peace Corps will charge the direct costs.

(3) *Review.* The Peace Corps will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted by the Peace Corps to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the Peace Corps' re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (d)(1)(ii) of this section.

(e) *Restrictions on charging fees.* (1) When the Peace Corps determines that a requester is an educational institution, non-commercial scientific institution, or representative of the news media, and the records are not sought for commercial use, it will not charge search fees.

(2)(i) If the Peace Corps fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (e)(1) of this section, may not charge duplication fees, except as described in (e)(2)(ii) through (iv).

(ii) If the Peace Corps has determined that unusual circumstances as defined in § 303.2 apply and the Peace Corps provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(iii) If the Peace Corps has determined that unusual circumstances as defined in § 303.2 apply and more than 5,000 pages are necessary to respond to the request, the Peace Corps may charge search fees, or, in the case of requesters described in paragraph (e)(1) of this section, may charge duplication fees, if the following steps are taken: the Peace Corps will have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and

the Peace Corps will have discussed with the requester via written mail, e-mail, or telephone (or made not less than three good faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5. U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Peace Corps may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, the Peace Corps will provide without charge:

- (i) The first 100 pages of duplication (or the cost equivalent for other media); and
- (ii) The first two hours of search.

(5) No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than \$25.

(f) *Notice of anticipated fees in excess of \$25.00.* (1) When the Peace Corps determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the Peace Corps will notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Peace Corps will advise the requester accordingly. If the request is not for noncommercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) If the Peace Corps notifies the requester that the actual or estimated fees are in excess of \$25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester will provide the commitment or designation in writing, and will, when applicable, designate an exact dollar amount the requester is willing to pay. The Peace Corps will not accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Peace Corps estimates that the total fee will exceed that amount, the Peace Corps will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Peace Corps will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Peace Corps will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(g) *Charges for other services.* Although not required to provide special services, if the Peace Corps chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(h) *Charging interest.* The Peace Corps may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at

the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the Peace Corps. The Peace Corps will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregating requests.* When the Peace Corps reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Peace Corps may aggregate those requests and charge accordingly. The Peace Corps may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, the Peace Corps will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(j) *Advance payments.* (1) For requests other than those described in paragraph (j)(2) or (j)(3) of this section, the Peace Corps may not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment before copies are sent to a requester) is not an advance payment.

(2) When the Peace Corps determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Peace Corps may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to the Peace Corps within 30 calendar days of the billing date, the Peace Corps may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Peace Corps may require that the requester make an advance payment of the full amount of any anticipated fee before the Peace Corps begins to process a new request or continues to process a

pending request or any pending appeal. Where the Peace Corps has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Peace Corps requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the Peace Corps' fee determination, the request will be closed.

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires the Peace Corps to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Peace Corps will inform the requester of the contact information for that program.

(1) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The Peace Corps will furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (1)(2)(i) through (iii) are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request will concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated; and

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records will be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding; and

(B) The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public will be considered. The Peace Corps will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure will not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Peace Corps will consider the following criteria:

(A) The Peace Corps will identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters will be given an opportunity to provide explanatory information regarding this consideration; and

(B) If there is an identified commercial interest, the Peace Corps will determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (1)(2)(i) and (ii) are satisfied and any commercial interest is not the primary interest furthered by the request. The Peace Corps ordinarily will presume that when a news media requester has satisfied factors of paragraphs (1)(2)(i) and (ii), the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others

who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Peace Corps and should address the criteria referenced under paragraph (1) of this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will pay any costs incurred up to the date the fee waiver request was received.

(5) These fee waiver/reduction provisions are subject to appeal in the same manner as appeals from denial under § 303.13.

(m) *Minimal amount.* No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed the average cost of processing a payment.

(n) *Agreement to pay fees.* Requesters must agree to pay all fees charged for services associated with their requests.

(o) *Charging interest.* Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(p) *Nonpayment of fees.* The Peace Corps is not required to process a request for a requester who has not paid FOIA fees owed to another Federal agency.

(q) *Multiple copies.* The Peace Corps reserves the right to charge for multiple copies of any document that will be provided to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

19. Amend newly redesignated § 303.17 by revising paragraphs (a)(1) through (6) and (b)(1) through (3) to read as follows:

§ 303.17 Procedures for responding to a subpoena.

(a) * * *

(1) This section sets forth the procedures to be followed in proceedings in which the Peace Corps is not a party, whenever a subpoena, order, or other demand (collectively referred to as a “demand”) of a court or other authority is issued for:

(i) The production or disclosure of any material contained in the files of the Peace Corps;

(ii) The production or disclosure of any information relating to material contained in the files of the Peace Corps;

(iii) The production or disclosure of any information or material acquired by any person while such person was an employee of the Peace Corps as a part of the performance of their official duties or because of their official status, or

(iv) The production of an employee of the Peace Corps for the deposition or an appearance as a witness in a legal action or proceeding.

(2) For purposes of this section, the term “employee of the Peace Corps” includes all officers, employees, volunteers, and trainees of the Peace Corps appointed by, or subject to the supervision, jurisdiction or, control of, the Director of the Peace Corps, including personal services contractors. Also, for purposes of this section, records of the Peace Corps do not include records of the Office of Inspector General.

(3) This section is intended to provide instructions regarding the internal operations of the Peace Corps, and is not intended, and does not and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by a party against the Peace Corps.

(4) This section applies to:

(i) State and local court, administrative and legislative proceedings; and

(ii) Federal court and administrative proceedings.

(5) This section does not apply to:

(i) Congressional requests or subpoenas for testimony or documents; and

(ii) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Peace Corps (such as cases arising out of traffic accidents or domestic relations). Any questions regarding whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the Office of the General Counsel.

(6) Nothing in this section otherwise permits disclosure of information by the Peace Corps except as is provided by statute or other applicable law.

(b) * * *

(1) No employee or former employee of the Peace Corps shall, in response to a demand of a court or other authority set forth in paragraph (a) of this section produce any material, disclose any information, or appear in any proceeding, described in paragraph (a) of this section without the approval of the General Counsel or designee.

(2) Whenever an employee or former employee of the Peace Corps receives a demand for the production of material or the disclosure of information described in paragraph (a) of this section they shall immediately notify and provide a copy of the demand to the General Counsel or designee. The General Counsel, or designee, shall be furnished by the party causing the demand to be issued or served a written summary of the information sought, its relevance to the proceeding in connection with which it was served, and why the information sought is unavailable by any other means or from any other sources.

(3) The General Counsel, or designee, in consultation with appropriate Peace Corps officials, including the Peace Corps' FOIA Officer, or designee, and in light of the considerations listed in paragraph (d) of this section, will determine whether the person on whom the demand was served should respond to the demand.

* * * * *

20. Add § 303.18 to read as follows:

§ 303.18 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: November 22, 2023.

James Olin,

FOIA and Privacy Officer.

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